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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 14, 2002

CC 01-92

BY HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554

Re: *Notice of Ex Parte Presentation*
**Petition of US LEC Corp. for a Declaratory Ruling Regarding LEC
Access Charges for CMRS Traffic**

Dear Ms. Dortch:

In accordance with section 1.1206 of the Commission's rules, 47 C.F.R. 1.1206, ITC^DeltaCom, through its attorneys, files this notice of *ex parte* presentation. On November 14, 2002, Steve Brownworth, Elisha Kusen, Kevin McEacharn, and Jerry Watts, all from ITC^DeltaCom Communications Inc., d/b/a ITC^DeltaCom, and Robert Aamothe and the undersigned, counsel to ITC^DeltaCom, met with Jared Carlson, Stacy Jordan, Joseph Levin, and Gregory Vadas of the Wireless Telecommunications Bureau, and Steve Moms and Victoria Schlesinger of the Wireline Competition Bureau.

During the meeting, ITC^DeltaCom discussed the issues raised in US LEC's petition, and explained the applicable call routing scenarios. ITC^DeltaCom distributed the attached presentation at the meeting, which summarizes the substance of the presentation.

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KELLEY DRYE & WARREN LLP

Marlene H. Dortch, Secretary
November 14, 2002
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Please contact me at (202) 887-1234 if you have any questions regarding this filing.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer M. Kashatus".

Jennifer M. Kashatus

Attachment

cc: Jared Carlson
Stacy Jordan
Joseph Levin
Steve Moms
Victoria Schlesinger
Gregory Vadas



Presentation to the
Federal Communications Commission

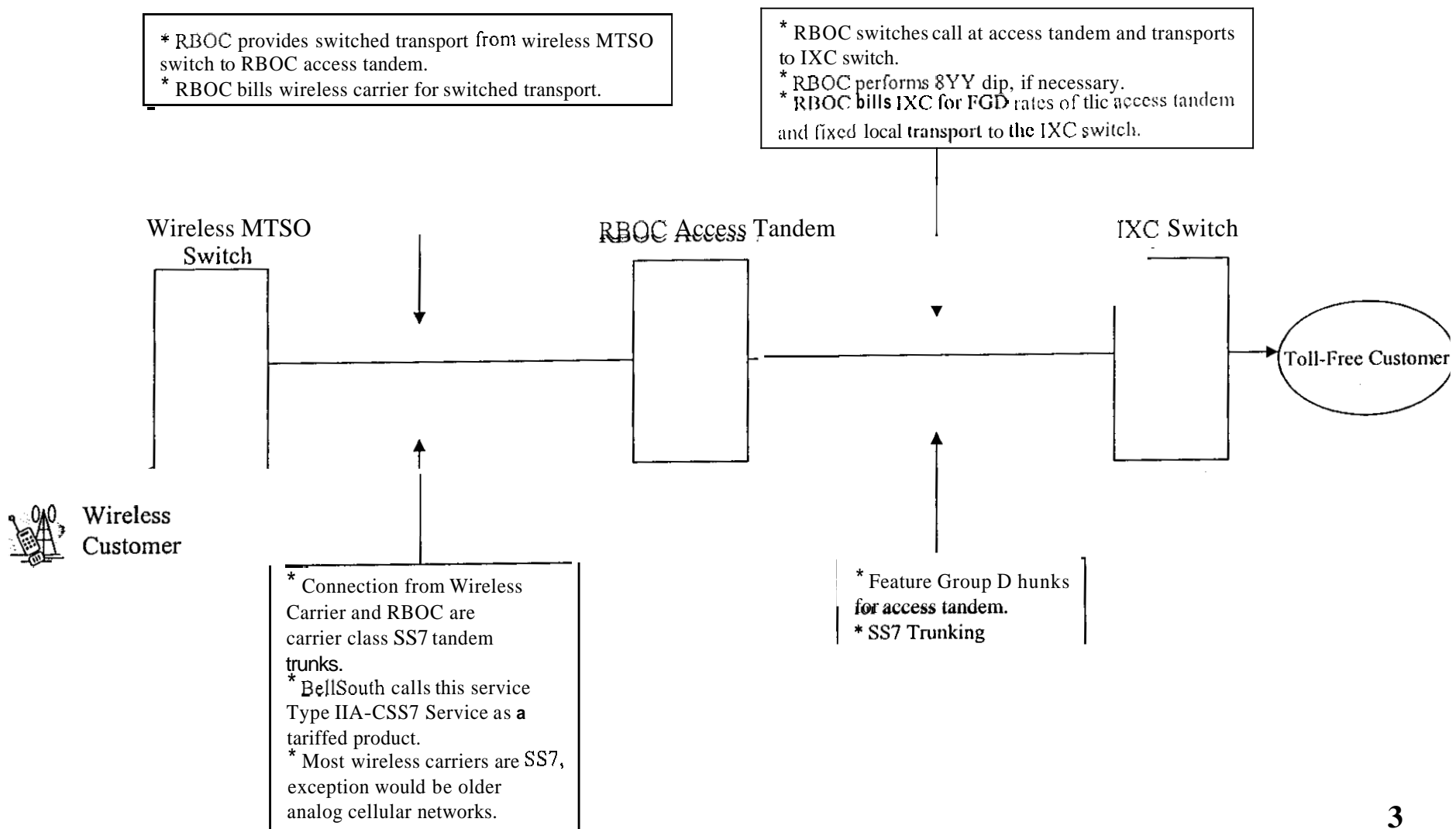
Opposition to US LEC Corp.'s Petition for
Declaratory Ruling, CC Docket No. 01-92

November 14, 2002

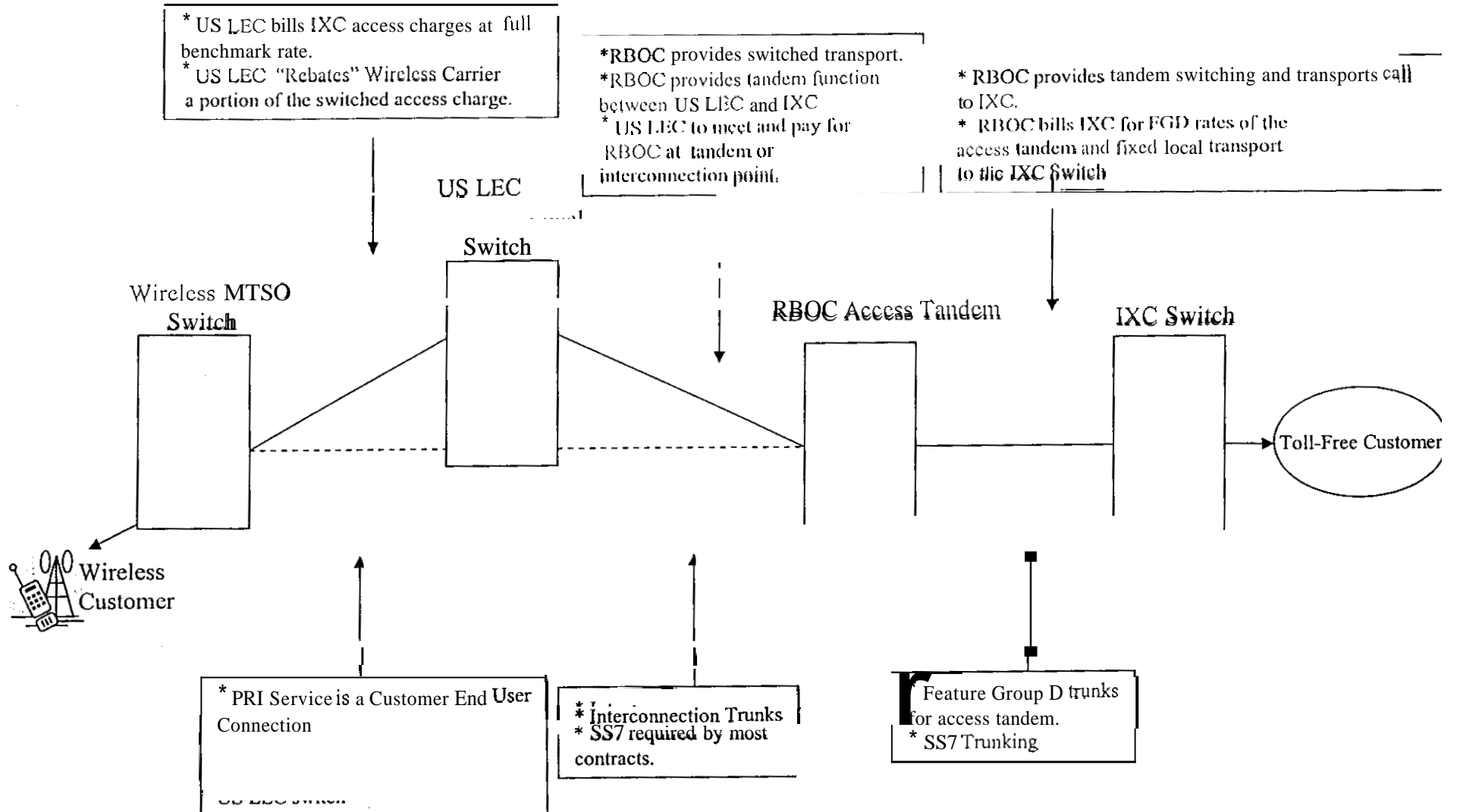
Overview

- The Commission should deny US LEC's petition.
- A declaratory ruling is an inappropriate vehicle to address US LEC's petition.
 - US LEC has not provided the Commission with an adequate factual background upon which to address the petition.
 - US LEC seeks to validate its scheme whereby it charges for services that it did not perform, performed unnecessarily, or performed without the consent of all parties.
 - US LEC charges for services for which the CMRS provider otherwise could not collect.
 - Contrary to US LEC's Reply Comments, the Commission should not address the generic legal question US LEC posits in its petition. The additional factual background is relevant to resolving the issues raised in US LEC's petition.

Traditional Wireless Toll-Free Call not involving US LEC



Wireless Toll-Free Call involving US LEC



The Commission Should Not Address the Generic Legal Question Presented in US LEC's Petition

- A declaratory ruling is appropriate only where there is an adequate – and undisputed – factual background.
 - US LEC has omitted material information.
 - US LEC seeks a Commission decision to validate its routing and access charge scam.
- The Commission should deny US LEC's request to answer only the generic legal question.
 - US LEC wants the Commission to ignore the call routing scenario pursuant to which it imposes access charges, and to make a blanket statement that LECs (whether CLECs or ILECs) are entitled to impose access charges for any and all CMRS-originated traffic that transits their networks. US LEC cannot point to any applicable precedent to support its position.
 - The Commission has not comprehensively addressed whether – and to what extent – LECs are entitled to compensation for CMRS-originated traffic in the calling scenario US LEC employs.
 - The issues raised in US LEC's petition are intertwined with unresolved intercarrier compensation issues.

US LEC's Access Charges Are Unlawful

- Contrary to US LEC's assertion, this is not a rate case.
 - ITC^DeltaCom is not challenging *per se* the dollar amounts that US LEC charges.
 - ITC^DeltaCom challenges US LEC's practice of charging for services that it did not actually perform.
 - These issues could be addressed within the context of US LEC's petition.
- Components of access charges:
 - Local loop;
 - Local switching; and
 - Transport
- The aggregate CLEC benchmark rate incorporates each of the above components.

US LEC's Access Charges Are Unlawful (cont.)

- A carrier can charge only for those services that it actually performs.
 - In a CMRS-originated call, the CMRS carrier provides the loop, and in some instances, local switching. Therefore, there is no basis for US LEC to impose access charges at the full benchmark rate.
- US LEC adds no value to the call. US LEC inserts itself as a faux transit carrier and performs duplicative and unnecessary functions.
- Under US LEC's interpretation of meet point billing, IXC's would be subjected to a potentially endless chain of access charges.

Joint Billing Arrangements Do Not Justify US LEC's Calling Scheme

- There is no arrangement among ITC^DeltaCom, US LEC, and the wireless carrier permitting the imposition of access charges.
 - ITC^DeltaCom did not order service from US LEC knowingly or consent to this scheme.
 - A CMRS provider cannot unilaterally impose access charges.
 - US LEC rebates a portion of the access revenues it collects with the CMRS provider.
 - Therefore, US LEC is circumventing Commission policies by collecting access charges that the CMRS provider otherwise could not collect.

Joint Billing Arrangements Do Not Justify US LEC's Calling Scheme (cont.)

- In a meet point billing arrangement, each LEC bills the IXC only for those services that it actually – and legitimately – performs.
- In a true meet point billing arrangement, ITC^DeltaCom would not have been billed for the same function by both US LEC and the ILEC.

Joint Billing Arrangements Do Not Justify US LEC's Calling Scheme (cont.)

- Under US LEC's interpretation of meet point billing, IXCs would be subjected to a potentially endless chain of access charges.
- Meet point billing does not justify billing for functions that the carrier did not actually perform, or that it performed unnecessarily.
- US LEC is not permitted to misrepresent the nature of the traffic or on whose behalf the traffic is being billed under the guise of meet point billing or other joint billing arrangements. Under traditional joint billing arrangements, the IXC would have knowledge of all parties involved in the calling scenario.

Conclusion

- The Commission should deny US LEC's petition.
- Alternatively, the Commission at most should confirm that LECs can impose access charges – at reasonable rates – only for those functions that they legitimately perform with the consent of all parties.